

# EXHIBIT A

## “Part 1”

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

In the matter of:

DAVID FRAZIER II dba  
FRAZIER'S PAWN SHOP

ATF Martinsburg Satellite Office  
40 Compass Pointe  
Martinsburg, WV 25404

Wednesday,  
August 21, 2019

The above-entitled matter came on for  
hearing, pursuant to notice, at 10:00 a.m.

BEFORE: MICHAEL FRONCZAK, DIO  
Hearing Officer

Free State Reporting, Inc.  
1378 Cape St. Claire Road  
Annapolis, MD 21409  
(410) 974-0947

A P P E A R A N C E S

On behalf of the Government:

MICHAEL BOYER, Division Counsel  
Bureau of Alcohol, Tobacco, Firearms & Explosives  
Washington Field Division  
(202) 648-8098  
Michael.Boyer@atf.gov

JAMES VANN, Associate Chief Counsel  
Firearms and Explosive Law Division  
Bureau of Alcohol, Tobacco, Firearms & Explosives

On behalf of the Licensee:

DAVID M. FRAZIER II, Pro se

Also Present:

CYNTHIA CHUY, Area Supervisor  
Bureau of Alcohol, Tobacco, Firearms & Explosives  
Falls Church Field Office

I N D E X

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Keith W. Martin	11	60	63	70
Eileen Valls	73	122	122	--
David M. Frazier II	129	--	--	--

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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>MARKED</u>	<u>RECEIVED</u>
GOVERNMENT'S		
G-1	10	10
G-2	10	10
G-3	11	11
G-4	11	11
G-5	24	24
G-6	55	55
G-7	77	77
G-8	80	80
G-9	81	81
G-10	86	87
G-11	91	91
G-12	92	92
G-13	98	98
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APPLICANT'S

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P R O C E E D I N G S

(9:58 a.m.)

HEARING OFFICER FRONCZAK: The hearing has officially begun. It is 9:58 a.m. The date is August 21, 2019. We are located at 40 Compass Pointe, Martinsburg, West Virginia 25404.

My name is Michael Fronczak. I am the Director of Industry Operations for the Washington Field Division and will be the officer presiding over this hearing by the direction and under the authority of the Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Department of Justice.

The hearing is an administrative proceeding and is informal in nature. The hearing is to review the Notice to Deny Application for License of David Frazier trading as Frazier's Pawn Shop, ATF Form 5300.43, issued under the provisions of Title 27, Code of Federal Regulations, Part 478, Subpart E.

As the result of the issuance of ATF Form 5300.43, you requested in writing that a hearing be granted. The focus of this hearing will be on the evidence regarding whether the application should be denied.

There are a couple of procedural issues I will address before we get started. As you can see, a

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1 transcript is being made of these proceedings for the  
2 record. Because of this, I ask that each person speak  
3 one at a time so that a clear and accurate record can  
4 be made. Answers must be audible. Please do not nod  
5 or shake your head in response to a question.

6 At this time, I will ask the Licensee,  
7 Mr. Frazier, to introduce himself, and please give your  
8 full name and spell your last name for the record.

9 MR. FRAZIER: My name is David Milton  
10 Frazier, F-r-a-z-i-e-r.

11 HEARING OFFICER FRONCZAK: Thank you. ATF  
12 attorney, Michael Boyer, will be presiding for the  
13 Government producing evidence on behalf of ATF.

14 Introduce yourself, ATF representatives in  
15 the room and any observers.

16 MR. BOYER: Sure thing. Michael Boyer,  
17 Division Counsel for Washington Field Division, Bureau  
18 of Alcohol, Tobacco, Firearms and Explosives,  
19 representing ATF here today. And along with me is  
20 James Vann, Associate Chief Counsel of the Firearms and  
21 Explosives Law Division of the ATF.

22 HEARING OFFICER FRONCZAK: James, spell your  
23 last name.

24 MR. VANN: My last name is spelled V as in  
25 Victor, a-n-n.



1 MR. BOYER: And here observing the  
2 proceedings, we have Cynthia Chuy visiting from the  
3 Falls Church Field Office who is an area supervisor.

4 HEARING OFFICER FRONCZAK: Cynthia, spell  
5 your last name for the record.

6 MS. CHUY: C-h-u-y.

7 HEARING OFFICER FRONCZAK: And, Mr. Boyer,  
8 you can now proceed with the Government's presentation.

9 MR. BOYER: Thank you, Mr. Hearing Officer.

10 Sir, before I begin, it may be helpful for  
11 the record to simply establish why we are here today  
12 and what we intend on introducing into the record.

13 We're here today simply because Mr. Frazier,  
14 operating under the license Frazier's Pawn Shop, has  
15 proven to be a threat to public safety insofar as he's  
16 shown reckless disregard and plain indifference toward  
17 the federal firearms laws and regulations. And the  
18 evidence will show that Mr. Frazier received his  
19 license back in 2009, at which time he received an  
20 acknowledgement form acknowledging the rules and  
21 regulations associated with the dealing of firearms.

22 Since that time, he has gone through three  
23 prior compliance inspections, one in 2010, one in 2010,  
24 and one in 2014. The result of each of those  
25 compliance inspections was a warning. In 2010 the

1 inspection was followed up with a warning letter to  
2 Mr. Frazier, letting him know that any further  
3 violations could result in revocation.

4           Following the 2012 compliance inspection,  
5 Mr. Frazier came in for a warning conference, and that  
6 was also accompanied with a warning letter, both of  
7 which put again Mr. Frazier on notice of potential  
8 revocation.

9           Finally, in 2014, following that inspection,  
10 an additional warning letter was issued.

11           Following that time, in fast forward, in May  
12 of 2017, ATF's office here in Martinsburg received a  
13 call, and due to the information that was received, as  
14 will be relayed by Special Agent Keith Martin, they  
15 opened up an investigation into Mr. Frazier over  
16 concerns about potential firearms being sold backdoor  
17 or without paperwork, and that following this  
18 information, they opened up and sent in a confidential  
19 informant who subsequently went into Frazier's Pawn  
20 Shop and was able to purchase using by way of straw  
21 purchase, an individual to obtain firearms. That was  
22 again two times and then again on January 18 of 2018,  
23 and additional straw purchase was performed by the ATF  
24 office.

25           We'll go ahead and proceed from there, and as

1 we call in the witnesses, we will insert the exhibits  
2 in chronological order. But before calling the first  
3 witness, we can take care of the first few Government  
4 exhibits here.

5 MR. BOYER: The first exhibit is going to be  
6 the Notice to Deny Application for License. This is a  
7 nine-page document, and I will provide a copy of  
8 Government Exhibit 1 to Mr. Frazier, the Hearing  
9 Officer and to the court reporter.

10 HEARING OFFICER FRONCZAK: Government Exhibit  
11 Number 1 is accepted.

12 **(Government's Exhibit 1 marked and received in**  
13 **evidence.)**

14 MR. BOYER: Government Exhibit 2 is a one-  
15 page document. It's an email from Mr. Frazier to the  
16 Hearing Officer requesting a hearing. I'm handing a  
17 copy of Government Exhibit 2 to Mr. Frazier, to the  
18 Hearing Officer, and court reporter.

19 HEARING OFFICER FRONCZAK: Government Exhibit  
20 2 is accepted for the record.

21 **(Government's Exhibit 2 marked and received in**  
22 **evidence.)**

23 MR. BOYER: Government Exhibit 3 is the  
24 Notice of Hearing. It's a two-page document with cover  
25 letter, and the second page contains the initial

1 hearing date. I'm handing a copy of Government Exhibit  
2 3 to Mr. Frazier, the court reporter, and one to the  
3 Hearing Officer.

4 HEARING OFFICER FRONCZAK: Government Exhibit  
5 3 is accepted for the record.

6 **(Government's Exhibit 3 marked and received in**  
7 **evidence.)**

8 MR. BOYER: Government Exhibit 4 again is a  
9 two-page document. This was a Notice of Hearing  
10 Change, a two-page document. And as noted on the  
11 second page, Mr. Frazier was put on notice that the  
12 hearing would be changed and scheduled for today,  
13 August 21, 2019. A copy for Mr. Frazier, the Hearing  
14 Officer, and court reporter.

15 HEARING OFFICER FRONCZAK: Government Exhibit  
16 4 is accepted for the record.

17 **(Government's Exhibit 4 marked and received in**  
18 **evidence.)**

19 MR. BOYER: And with that, we'd go ahead and  
20 call the first witness.

21 (Whereupon,

22 **KEITH W. MARTIN**

23 was called as a witness by and on behalf of the  
24 Government and was examined and testified as follows:)

25 **DIRECT EXAMINATION**

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1 BY MR. BOYER:

2 Q. Would you state your full name and occupation  
3 for the record?

4 A. My name is Keith Wade Martin, last name  
5 spelling M-a-r-t-i-n. I am employed with the Bureau of  
6 Alcohol, Tobacco, Firearms and Explosives, or ATF, and  
7 my title is Special Agent. I am assigned to the ATF  
8 Martinsburg, West Virginia Field Office.

9 Q. Agent Martin, how long have you been working  
10 with ATF?

11 A. I have been working with ATF for  
12 approximately 5 years. Prior to that, I have 12 years  
13 with the West Virginia State Police and 9 years in  
14 federal law enforcement.

15 Q. And as part of that, prior to coming in, did  
16 you receive any training?

17 A. Yes, sir, I did.

18 Q. And what was that training?

19 A. That training was at the Federal Law  
20 Enforcement Training Center which is located in  
21 Georgia.

22 Q. Okay. How long was that training?

23 A. That training was approximately 7½ months.

24 Q. And did you at any point receive training in  
25 federal firearms laws and regulations?

1 A. Yes, sir, I did.

2 Q. Can you tell us a little bit about that?

3 A. I received extensive training at the ATF  
4 National Academy, which is located at the -- we call it  
5 the FLETC facility, and that involved again extensive  
6 training on federal firearms laws, federal firearms  
7 violations, and also including violations by federal  
8 firearms licensees with regard to federal firearms  
9 laws.

10 Q. And, Agent Martin, are you familiar with what  
11 straw purchases are?

12 A. Yes, sir, I am.

13 Q. Okay. And you may have heard me note it  
14 earlier that one of the reasons we are here is because  
15 several straw purchases were done at Frazier's Pawn  
16 Shop. But before we go into the details of those, can  
17 you just give us an idea, what is a straw purchase and  
18 why are they done?

19 A. Yes, sir. There are actually two common  
20 terms that are utilized, the first one being a straw  
21 purchase. And when we say straw purchase, we refer to  
22 as an individual which is often prohibited will have  
23 another individual actually go in and make the firearm  
24 purchase for the other person. And the person who  
25 makes the firearm purchase will complete the ATF Form

1 4473 and go through the FBI NICS, which is the National  
2 Instant Background Check System, background check,  
3 knowing though that the firearm is intended for the  
4 other party, which like I said is typically a  
5 prohibited person. So we refer to that as a straw  
6 purchase.

7 And we also refer to firearm sales that are  
8 considered off the books, that is, a firearm sale by a  
9 federal firearms licensee that is completed without the  
10 completion of the ATF Form 4473 and the NICS background  
11 check. And it is basically not documented as required  
12 by federal law.

13 Q. I appreciate that. And is there anything --  
14 I understand, you know, as part of a purchase from a  
15 licensee, an individual's required to fill out a Form  
16 4473; is that correct?

17 A. Yes, sir. That's correct.

18 Q. Okay. And is there anything on that Form  
19 4473 that tries to combat this, what you're referring  
20 to as a straw purchase?

21 A. Yes, sir. There are multiple questions on  
22 the front page of the ATF Form 4473. That's under  
23 Question 11, and it's a through 1. These questions  
24 consist of asking if you are the actual transferee or  
25 buyer of the firearm listed on this form; if you are

1 under indictment or information in any court for a  
2 felony or other crime for which a judge could imprison  
3 you for more than a year; if you have ever been  
4 convicted in any court of a felony or any crime for  
5 which the judge could have imprisoned you for more than  
6 a year; if you are a fugitive from justice; if you are  
7 an unlawful user of or addicted to marijuana or any  
8 depressant, stimulant, narcotic drug or any other  
9 controlled substance which is a violation of law; if  
10 you have ever been adjudicated mentally defective; if  
11 you have ever been discharged from the Armed Forces  
12 under dishonorable conditions; if you are subject to a  
13 court order restraining you from harassing, stalking,  
14 or threatening your child or an intimate partner or  
15 child of such partner; if you have ever been convicted  
16 in any court of a misdemeanor crime of domestic  
17 violence; if you have ever renounced your United States  
18 citizenship; if you are an illegal alien in the United  
19 States; and if you are an illegal alien, are you an  
20 illegal alien admitted to the United States or --  
21 correction -- if you are an alien admitted to the  
22 United States under a non-immigrant visa.

23 Q. Right. And that's good. I didn't mean for  
24 you to go through all of it, but thank you for doing  
25 that for us. But the main one that I wanted you to



1 identify, and which you did, was that in Form 4473, as  
2 11.a, the question is whether the individual is an  
3 actual transferee or buyer or not, correct?

4 A. Yes, sir. That's correct.

5 Q. All right. And are you familiar with  
6 Mr. Frazier?

7 A. Yes. Yes, I am.

8 Q. And Frazier's Pawn Shop?

9 A. Yes, I am.

10 Q. Okay. And I'm going to turn your attention  
11 now to May 3, 2017. I understand you received a call  
12 that day?

13 A. Yes, sir, I did.

14 Q. Okay. Can you tell us a little bit about  
15 that, what happened?

16 A. Well, on May 3, 2017, I received a referral  
17 from the Industry Operations, Martinsburg Office here,  
18 in reference to Frazier's Pawn Shop, receiving a  
19 suspected modified machine gun as part of a pawn  
20 transaction. I was advised by Industry Operations  
21 Investigator Eileen Valls that William Hoffman, an  
22 employee of Frazier's Pawn Shop, had contacted her to  
23 report receipt of a suspected machine gun. At that  
24 point I initiated an ATF investigation into that, and  
25 went to Frazier's Pawn Shop and spoke with Mr. Hoffman.

1 Q. All right. And did you, in fact, upon  
2 receipt of this information from IOI Eileen Valls go  
3 out to Frazier's Pawn Shop?

4 A. Yes, I did.

5 Q. And did you speak with Mr. Hoffman?

6 A. Yes, I did.

7 Q. And what did he tell you?

8 A. Mr. Hoffman had informed me that on March 8,  
9 2017, a Christopher Rebish had pawned a FN rifle, model  
10 PS90, 5.7 caliber, with serial number FN083685, several  
11 Pister (ph.) magazines, and assorted ammunition.  
12 Mr. Hoffman advised me that after the 30 days, when  
13 Mr. Rebish had failed to renew the pawn transaction,  
14 that Frazier's Pawn Shop had assumed ownership of this  
15 property. Mr. Hoffman, he advised me upon inspecting  
16 the weapon, discovered that it had been modified and  
17 was a fully automatic rifle.

18 Q. I see. And was the firearm there at the  
19 premises?

20 A. At the time that I was there, no, it was not.

21 Q. And do you know where it was?

22 A. Mr. Hoffman had provided me a copy of a pawn  
23 receipt and provided me a trigger mechanism. I refer  
24 to it as a trigger pack. Inside this trigger  
25 mechanism, it had the sear, the hammer, and the

1 detractor as part of the trigger system on the firearm.  
2 This particular firearm, you can remove that trigger  
3 mechanism and replace it with other trigger mechanisms.

4           So what I discovered, based on the pawn  
5 receipt, based on the credit card transaction, that the  
6 firearm had, and Mr. Hoffman advised me, they had  
7 removed the fully auto trigger pack system, placed in a  
8 semi-auto trigger pack system, and had sold the firearm  
9 to an individual. And I noticed that this was prior to  
10 normal business hours.

11           Q. And did this take you by surprise that the  
12 firearm was not there?

13           A. Yes, it did.

14           Q. Okay. And why is that?

15           A. Because what I explained to Mr. Hoffman was,  
16 they basically modified that firearm from an illegal  
17 NFA weapon to a GCA weapon, a Gun Control Act weapon,  
18 and had sold it. They should have maintained control  
19 of the entire firearm and contacted us.

20           Q. You mentioned that they had sold the firearm  
21 prior to reaching out and making that call to IOI  
22 Eileen Valls; is that correct?

23           A. Yes. The credit card transaction was the  
24 normal business day for Frazier's Pawn Shop. It opens  
25 at 10 a.m. The credit card receipt for that

1 transaction was approximately a half hour to an hour  
2 prior to that. And so Mr. Hoffman had advised he had  
3 modified this machine gun and sold it to an individual  
4 prior to the store opening.

5 Q. I see. When Hoffman called IOI Valls, did he  
6 inform her that he had already sold this firearm then?

7 A. No, he did not.

8 Q. All right. Now, following this information,  
9 did you have an opportunity to talk with this  
10 individual, Christopher Rebish, who Hoffman had  
11 mentioned?

12 A. Yes, I did. On July 17, 2017, myself and  
13 Agent Donald Lockhart interviewed Christopher Rebish at  
14 the Eastern Regional Jail here in Martinsburg. And  
15 during the course of that interview, Mr. Rebish  
16 admitted to manufacturing and possessing a machine gun,  
17 pawning it at Frazier's Pawn Shop. Mr. Rebish stated  
18 to us that when he was at Frazier's Pawn Shop and was  
19 in the process of pawning that firearm, he initially  
20 removed the trigger pack from the rifle and attempted  
21 to pawn the rifle without the trigger pack.

22 After advising Mr. Hoffman the rifle was a  
23 machine gun, Mr. Rebish stated that Mr. Hoffman had  
24 told him he still wanted the firearm and he also wanted  
25 the fully automatic trigger pack. Mr. Rebish admitted

1 to putting the trigger pack back into the rifle and  
2 giving it to Mr. Hoffman.

3 Q. I see. And so Hoffman had requested, based  
4 on what Rebish had told you, is that Hoffman had  
5 requested that he reinstall the trigger pack and bring  
6 it in as a fully automatic weapon?

7 A. That's correct.

8 Q. Did Mr. Rebish also mention anything about  
9 off-the-book sales at Frazier's Pawn Shop?

10 A. Yes. Mr. Rebish provided details that he had  
11 purchased several firearms off the books, as I  
12 explained earlier, from Frazier's Pawn Shop over a  
13 3-year period and that Mr. Rebish had informed  
14 Mr. Hoffman that he was a prohibited person from  
15 possessing firearms. Mr. Rebish informed us that  
16 Mr. Hoffman had firearms in the rear of the store that  
17 he regularly sells with no paperwork. Mr. Rebish said  
18 with cash, he explained that Mr. Hoffman would sell  
19 firearms off the books to practically anyone.

20 Q. Now, just to be clear for the record, when  
21 you say prohibited person, that essentially covers  
22 those categories that we discussed there on the 4473  
23 that would prohibit an individual from possessing a  
24 firearm; is that correct?

25 A. Yes, sir. So that's why I went through each

1 one individually. So those categories there, if you  
2 fall within one of those categories, you are prohibited  
3 from possessing firearms.

4 Q. I see. And Mr. Rebish had informed Hoffman  
5 that he was, in fact, a prohibited person?

6 A. That's correct.

7 Q. Now, based on this information, then, what  
8 did you do?

9 A. Based on that information, we opened an  
10 investigation into Frazier's Pawn Shop and began an  
11 investigation into potentially illegal firearm sales.

12 Q. Okay. And what were your first steps? What  
13 was the approach that you were going to take with this  
14 criminal investigation?

15 A. Our, well, first steps were we -- I had  
16 submitted and received approval through ATF to begin an  
17 investigation into a FFL, and then the second step was  
18 we -- I utilized an ATF confidential informant who was  
19 a convicted felon to go into Frazier's Pawn Shop to  
20 attempt to purchase firearms either off the books or  
21 through straw purchases.

22 Q. I see. And can you tell us a little bit, the  
23 confidential informant, how did that work and how did  
24 you know this individual?

25 A. A confidential informant through ATF is

1 typically someone who is a prohibited person. It can  
2 be a number of reasons for someone to be a confidential  
3 informant with us. It could be that they are working  
4 with us and at times will receive payment in the form  
5 of subsistence for their actions. Other times, it is a  
6 cooperating defendant in another ATF case and, at that  
7 point, to receive the benefit of cooperating with us  
8 for the court's consideration for leniency on their  
9 sentences. And typically what happens is we have to  
10 vet these individuals and complete various paperwork  
11 for ATF, obtain their fingerprints and again thoroughly  
12 vet these individuals, and at that point submit  
13 approval which is -- and have to gain approval for us  
14 to be able to use them as an ATF confidential  
15 informant.

16 Q. I see. And in this case, you mentioned that  
17 you had received permission from ATF to use a  
18 confidential informant. How did you use the  
19 confidential informant in this case then?

20 A. So in moving forward, I'll just address him  
21 as a CI, but --

22 Q. Sure.

23 A. -- it was ATF Confidential Informant Number  
24 15213 which we had received approval to utilize. And  
25 basically as a convicted felon, which was confirmed, we

1 conducted a series of controlled monitorings and sent  
2 the informant into Frazier's Pawn Shop with the intent  
3 to try to buy either a firearm off the books or through  
4 what we call straw purchases that had been explained  
5 earlier.

6 Q. All right. And just to be clear, so when you  
7 say he's a convicted felon, it means that he was  
8 prohibited under 18 U.S.C. 19(g)(1) from possession of  
9 a firearm, correct?

10 A. Yes, sir, that's correct.

11 Q. Okay. Now, on August 25, 2017, then, did you  
12 send this confidential informant into Frazier's Pawn  
13 Shop?

14 A. Yes. On August 25, 2017, myself and agents  
15 out of the Martinsburg, West Virginia Field Office,  
16 facilitated the controlled monitoring, utilizing our  
17 CI, and sent the CI to Frazier's Pawn Shop to solicit a  
18 conversation about an interest in purchasing a firearm  
19 without the completion of an ATF Form 4473 or an FBI  
20 NICS background check.

21 Q. And did you send him in with any kind of  
22 recording device?

23 A. Yes. We placed a recording device on the CI  
24 when we sent him in.

25 MR. BOYER: And at this time, I'd like to



1 offer Government Exhibit 5, and I'll provide a copy to  
2 the court reporter, to the Hearing Officer, and to  
3 Mr. Frazier.

4 HEARING OFFICER FRONCZAK: Government Exhibit  
5 Number 5 is accepted into the record.

6 **(Government's Exhibit 5 marked and received in**  
7 **evidence.)**

8 BY MR. BOYER:

9 Q. And before we continue then with the events  
10 on August 25, 2017, just to speak to this Government  
11 Exhibit 5 briefly, Special Agent Martin, you prepared  
12 this CD for purposes of this hearing today, correct?

13 A. Yes, sir, I did.

14 Q. All right. And what is contained on this  
15 Government exhibit CD?

16 A. It is going to be audio and video recordings  
17 of our controlled monitorings that we're going to  
18 discuss moving forward as part of this investigation  
19 involving our confidential informant and ATF undercover  
20 agents.

21 Q. And so the audio recording that was done then  
22 on August 25th, when you sent in the CI into Frazier's  
23 Pawn Shop, that recording is on Government Exhibit 5,  
24 correct?

25 A. That's correct.

1 Q. Okay. All right. We'll go ahead and just  
2 have you speak to what happened then on August 25,  
3 2017, obviously knowing that the full account is  
4 recorded on Government Exhibit 5, but if you could,  
5 just tell us what happened then on August 25th?

6 A. Yes, sir. I will provide a synopsis of what  
7 transpired that day and of the recording, but I would  
8 say that it is not intended to be verbatim or  
9 transcribed account of the controlled monitoring, and  
10 an examination of the original recording of this  
11 controlled monitoring is the best evidence of its  
12 content.

13 Q. Sure. I appreciate that.

14 A. So the confidential informant arrived at  
15 Frazier's Pawn Shop and entered the store and began  
16 walking around the store looking at merchandise. The  
17 CI then approached the firearms counter and began a  
18 conversation with William Hoffman, again an employee of  
19 Frazier's Pawn Shop. The CI and Hoffman initially  
20 spoke about knives and swords. The CI spoke about his  
21 interest in purchasing a firearm. The CI and Hoffman  
22 discussed firearms, and the CI asked Hoffman for  
23 recommendations on firearms to potentially purchase.

24 Q. Was there at some point a discussion between  
25 the CI and Hoffman that he may be a prohibited person?

1 A. That's correct. The CI had mentioned to  
2 Hoffman that he had a prior conviction from  
3 approximately 40 years ago and --

4 Q. How did Hoffman respond to that?

5 A. Hoffman explained to the CI about felony  
6 convictions versus misdemeanor convictions. Hoffman  
7 asked where his conviction occurred at, and the CI  
8 replied Fairfax County, Virginia. The CI asked Hoffman  
9 if their cousin could come and complete the paperwork  
10 and purchase the firearm. Hoffman then explained that  
11 that is a straw purchase with a possible penalty of up  
12 to 10 years for the CI and their cousin.

13 Q. So just to be clear, so Mr. Hoffman, did he  
14 use the word "straw purchase"?

15 A. Yes, he did.

16 Q. And he actually informed the CI at that point  
17 that the possible penalty for a straw purchase or straw  
18 sale in this case would be 10 years?

19 A. That's correct.

20 Q. Okay. Is it, in fact, a 10-year punishment  
21 for a straw purchase?

22 A. Yes, that's correct.

23 Q. All right. What happens after Hoffman  
24 informs the CI of that?

25 A. Hoffman informed the CI that them and their

1 cousin not to get caught. Hoffman discussed his  
2 previous criminal convictions and that one of the  
3 employees at Frazier's Pawn Shop was involved in a  
4 domestic violence incident.

5 Q. Was there any discussion of a no paperwork  
6 sale or purchasing a firearm without paperwork?

7 A. Yes. Hoffman explained to the CI that a  
8 private party sale involved no paperwork or paper  
9 trail.

10 Q. All right. And was that -- did the CI  
11 express an interest in purchasing a firearm without  
12 paperwork?

13 A. I don't believe at that time the CI has  
14 stated that he would be interested in a private party  
15 sale, but Mr. Hoffman further suggested that the CI  
16 take their cousin with them for a private party sale  
17 and have the cousin conduct the transaction for the CI.

18 Q. I see. I see. Anything further from that  
19 meeting?

20 A. Mr. Hoffman advised the CI to go to the West  
21 Street (ph.) State Police Office, have them conduct a  
22 criminal background check to determine that prior  
23 conviction from 40 years ago. And the CI and  
24 Mr. Hoffman discussed the price of swords, and then the  
25 CI departed the store.

1 Q. Okay. And upon departing the store, the CI  
2 returned to this office?

3 A. That's correct.

4 Q. Okay. And returned the transmitting device;  
5 is that correct?

6 A. Yes, that's correct, and was debriefed by  
7 myself.

8 Q. Okay. Now, that was on August 25th. Now, on  
9 September 12, 2017, you send the confidential informant  
10 back into Frazier's Pawn Shop; is that correct?

11 A. That's correct, and again, with agents out of  
12 the ATF Martinsburg, West Virginia Field Office. The  
13 informant was sent back in, and again, as I previously  
14 stated, this is just a synopsis. It's not a verbatim  
15 or transcribed account of this recording.

16 Q. Yeah. So you again had the CI have a  
17 transmitter on him during the visit?

18 A. That's correct.

19 Q. And that full recording's on Government  
20 Exhibit 5?

21 A. That's correct.

22 Q. Okay. So just the shortened version then,  
23 what happens when the CI goes back into Frazier's Pawn  
24 Shop on September 12th?

25 A. Again entered Frazier's Pawn Shop, goes to

1 the firearms counter and greets William Hoffman. The  
2 CI informs Mr. Hoffman that they checked and their  
3 prior conviction is confirmed that it is a felony.

4 Q. All right. And how did Hoffman respond?

5 A. Mr. Hoffman suggested to the CI about getting  
6 the felony conviction expunged and explained if the CI  
7 had someone else buy the firearm for the CI and the CI  
8 got caught, that it is 10 years.

9 Q. So, again, explaining to him the straw  
10 purchase?

11 A. That's correct.

12 Q. All right. What did the CI say, and how did  
13 the conversation go from there?

14 A. The CI replied that they weren't worried  
15 about that and still wanted to buy a firearm.  
16 Mr. Hoffman began to tell the CI that he has a couple  
17 of friends that are in the same situation as the CI,  
18 and when they go fishing, Mr. Hoffman will place or  
19 will give those friends a pistol. And if they would  
20 ever get involved in a shooting, that Mr. Hoffman would  
21 get the pistol back afterwards and would wipe the  
22 fingerprints off the pistol and would do this to stay  
23 alive and would deal with repercussions later.

24 Q. Just to be clear -- sorry. I didn't mean to  
25 cut you off.

1           A.    No.

2           Q.    But when you say the same situation as the  
3   CI, he has friends that are prohibited persons under  
4   the Gun Control Act and are not able to lawfully  
5   possess a firearm; is that correct?

6           A.    I'm assuming based on his statement that  
7   that's what he was insinuating, yes.

8           Q.    All right. Was again it discussed then no  
9   paperwork or a potential for that?

10          A.    Yes. Mr. Hoffman suggested to the CI about  
11   buying a firearm from off the streets or at a flea  
12   market, and the CI informed Mr. Hoffman that firearms  
13   for sale at the flea market are a little high priced.

14          Q.    Okay. Did the CI talk to Hoffman about  
15   potentially purchasing a firearm through Mr. Hoffman  
16   with no paperwork?

17          A.    Yes. Mr. Hoffman advised the CI that he will  
18   occasionally get a firearm off the street. Mr. Hoffman  
19   handed the CI a piece of paper to write the CI's name  
20   and phone number on it. Mr. Hoffman then wrote above  
21   the CI's name and phone number, no paper, and placed it  
22   in his wallet.

23          Q.    All right. And what happens after that?

24          A.    The CI advises Mr. Hoffman to contact them as  
25   soon as possible, again insinuating when he gets a

1 firearm, that he could sell to the informant.

2 Mr. Hoffman replied that it might be a little while  
3 because it's hit or miss when he comes across firearms.

4 The CI stated to Mr. Hoffman that they could have a  
5 cousin come in and complete the paperwork, and

6 Mr. Hoffman replied that if he gets something that has  
7 no contacts. So he's insinuating if he gets a firearm  
8 and he's calling it no contacts, that Mr. Hoffman can  
9 sell the CI a firearm and not have to go that route of  
10 having someone buy it for him.

11 Q. I see. All right. And does that essentially  
12 wrap up the visit there, the second visit of CI to  
13 Frazier's Pawn Shop?

14 A. Yes. The CI informs Mr. Hoffman that he has  
15 cash, and he departs the store.

16 Q. And as the previous time, does the CI return  
17 and turn in the recording device and is debriefed by  
18 yourself?

19 A. That's correct.

20 Q. Now, the CI ends up going back into Frazier's  
21 Pawn Shop after the second visit but this time without  
22 a recording device; is that correct?

23 A. Yes, that's correct.

24 Q. And what happened exactly, and how did you  
25 find out about it?



1           A.    On September 28, 2017, I was contacted by the  
2 CI by telephone. I was advised that the CI on  
3 Saturday, September 23, 2017, had gone into Frazier's  
4 Pawn Shop with a female acquaintance with the  
5 anticipation of purchasing a sword on their own, you  
6 know, personally.

7           Q.    So this was not part of the ATF criminal  
8 investigation necessarily?

9           A.    That's correct.

10          Q.    Okay. And what happened when the CI was in  
11 the store?

12          A.    The CI advised that they were approached by  
13 and spoke with Mr. Hoffman, and Mr. Hoffman informed  
14 the CI that he had not come across any firearms that he  
15 could sell to the CI, but Mr. Hoffman pointed to the  
16 female acquaintance that was with the CI and stated  
17 that he, Mr. Hoffman, could sell a firearm to her --  
18 through her, I'm sorry, through her to the CI in the  
19 form of a straw purchase.

20          Q.    All right. And what did the CI do at that  
21 point?

22          A.    The CI advised Mr. Hoffman he would get back  
23 with him and then departed the store and later  
24 telephoned me and advised me of this.

25          Q.    Okay. Did you then at a later point send the

1 CI in with a friend who performed the straw purchase?

2 A. That's correct.

3 Q. When was that?

4 A. On October 18, 2017, myself and again members  
5 of the ATF Martinsburg Field Office, we did a  
6 controlled monitoring with the CI and with ATF  
7 undercover Special Agent Rebecca Tomlinson.

8 Q. And Rebecca Tomlinson then was the friend of  
9 the CI that was going to accompany him into --

10 A. That's correct.

11 Q. -- Frazier's Pawn Shop? Okay. What happens  
12 when they go into Frazier's Pawn Shop?

13 A. Again, the recording device was placed on the  
14 CI.

15 Q. And, again, was this audio and video?

16 A. This was just audio, audio recording.

17 Q. Audio recording. And that audio recording is  
18 again part of Government Exhibit 5?

19 A. That's correct.

20 Q. Okay.

21 A. And, again, my synopsis will not be a  
22 verbatim or transcribed account of this controlled  
23 monitoring.

24 Q. Sure thing. So just in your own words then,  
25 what happens when Mr. Hoffman goes -- or excuse me,

1 when the CI goes back in with the agent?

2 A. Agent Rebecca Tomlinson will be referred to  
3 here as the UC. So the CI and UC entered the store and  
4 approached the firearms counter and greeted Mr. Hoffman  
5 at the firearms counter. The CI informed Mr. Hoffman  
6 that they had told him previously on the 23rd that they  
7 would be back and that they had brought a friend.

8 Q. Okay. Referring back to that conversation  
9 then on October 23rd when the CI was in there with his  
10 own friend; is that correct?

11 A. September 23rd, yes.

12 Q. September 23rd.

13 A. That's correct.

14 Q. Excuse me. What happened then?

15 A. The CI told Mr. Hoffman that it took an arm  
16 and a leg to get the UC there to purchase a firearm for  
17 him and that he had to buy the UC lunch and dinner.  
18 Mr. Hoffman asked the UC if she hit the CI up hard for  
19 lunch and dinner. The UC stated that, yes, since she  
20 had to come all the way out here. So there was some  
21 more exchange about the arrangement between the CI and  
22 the UC, and Mr. Hoffman asked the UC where she was  
23 from, and she stated Arlington, Virginia. Mr. Hoffman  
24 then discussed gun laws and gun control in Virginia,  
25 Maryland, and New York with the CI and the UC.

1 Q. So the point of this conversation, then, is  
2 the CI making it clear to Hoffman that he was prepared  
3 to purchase a firearm?

4 A. Yes, that she is there to purchase a firearm  
5 for the CI, yes.

6 Q. For the CI. But the CI would be the actual  
7 buyer?

8 A. That's correct.

9 Q. Okay. After they have this conversation then  
10 and Hoffman discusses the various gun laws in Virginia,  
11 Maryland, and New York, what happens?

12 A. The CI asked Mr. Hoffman if the UC having a  
13 Virginia driver's license was going to be a problem.  
14 Mr. Hoffman advises that handguns would have to be  
15 transferred to a FFL in Virginia, but that the UC could  
16 buy any long guns, which are rifles, shotguns, that she  
17 wanted, and Mr. Hoffman then began showing the CI  
18 different rifles at varying prices.

19 Q. Is that, in fact, the case? Can a member who  
20 is from out of state purchase a handgun in --

21 A. No, they cannot.

22 Q. Okay. But can they purchase a long gun?

23 A. If the state that they're coming from, if  
24 it's not a violation of state law, yes, they can  
25 purchase long guns. So in this case, a Virginia

1 resident can come into West Virginia to a FFL in West  
2 Virginia and purchase a long gun.

3 Q. Okay. So, again, Hoffman accurately then  
4 relayed the -- stated the law?

5 A. That's correct.

6 Q. What happened then?

7 A. The CI stated that they don't want to spend  
8 more than \$600, asked Mr. Hoffman if Mr. Hoffman could  
9 work with them, and this would be with regard to AR-15  
10 type rifles that were there present at the shop.  
11 Mr. Hoffman stated that he could not come down that low  
12 on price on AR-15s.

13 The CI then asked about a Hi-Point rifle.  
14 This Hi-Point rifle was going to be a model 4595, .45  
15 caliber rifle with serial number R55185. So the CI  
16 chose that rifle, and then they -- Mr. Hoffman obtained  
17 the box for that rifle, and the CI and Mr. Hoffman then  
18 arranged for pricing for ammunition and for the rifle.

19 Q. I see. And so the discussion over the Hi-  
20 Point rifle then is between Hoffman and the CI?

21 A. That's correct.

22 Q. And the undercover agent is simply standing  
23 by?

24 A. That's correct.

25 Q. Okay. At some point, did the CI inform

1 Hoffman that he wanted to purchase it?

2 A. Yes, he did.

3 Q. Okay. And what happened at that point?

4 A. The CI, again they negotiated a price for the  
5 rifle and ammunition. The CI goes over to the cashier  
6 and pays cash for the rifle, and Mr. Hoffman then has  
7 the UC complete the ATF 4473.

8 Q. All right. And does the undercover agent  
9 fill out the Form 4473?

10 A. Yes, she does.

11 Q. All right. And what happens after that?

12 A. Mr. Hoffman goes and calls in the FBI NICS  
13 background check on the UC for the firearm purchase and  
14 then comes back out and tells the UC -- calls the UC by  
15 her undercover name. The CI asked Mr. Hoffman if the  
16 UC was good. Mr. Hoffman then stated that she was  
17 good.

18 Q. Who actually went over to the cash register  
19 and paid for the rifle?

20 A. The CI did.

21 Q. Okay. And did the cashier accept the CI's  
22 money and complete the transaction?

23 A. Yes, they did.

24 Q. All right. What happens after the  
25 transaction is complete and he comes back?

1           A.    At the conclusion, the CI picks up the rifle  
2 and begins to walk out with it. Mr. Hoffman stated  
3 that the rifle was in the UC's name and indicated that  
4 the UC is the one that needed to carry it out of the  
5 store. The CI says that the rifle is heavy for the UC,  
6 and Mr. Hoffman stated that the UC doesn't look that  
7 helpless. So the CI gives the UC the rifle, and the UC  
8 carries the rifle out into the parking lot.

9           Q.    And as on previous occasions, does the CI and  
10 UC return to this office?

11          A.    That's correct. They returned to this  
12 office. I collected the evidence and the recordings  
13 and again debriefed the CI.

14          Q.    Now, before moving on, during this visit, did  
15 the CI also mention that he still wanted to buy a  
16 pistol?

17          A.    That's correct. During the exchange, the CI  
18 does indicate that they would like to buy a pistol,  
19 yes.

20          Q.    Okay. All right. Then do you send the CI  
21 back into Frazier's Pawn Shop?

22          A.    Yes. On October 24, 2017.

23          Q.    Okay. And tell us about that.

24          A.    Again, this is with the CI and another ATF  
25 undercover special agent. Her name is Sabrina Hager,

1 and she will hereafter be referred to as the UC. So,  
2 again, we sent the CI and the UC into Frazier's Pawn  
3 Shop on October 24, 2017. This is a controlled  
4 monitoring. There is a recording device on the CI, and  
5 this was facilitated by myself and agents here at the  
6 Martinsburg Field Office.

7 Q. Okay. And, again, was this audio,  
8 audio/video?

9 A. This was audio and video which both are  
10 included in Exhibit 5.

11 Q. In Government Exhibit 5. All right. What  
12 happens when the CI and the UC agent goes into  
13 Frazier's Pawn Shop?

14 A. When they go in, they again make contact and  
15 are greeted by Mr. Hoffman at the firearms counter.  
16 The CI states to Mr. Hoffman that the rifle that they  
17 had purchased on October 18, 2017 works pretty good,  
18 but it felt like it was trying to jam after a few  
19 rounds. So the CI had to oil the rifle. Mr. Hoffman  
20 replied that there is a break-in point on most  
21 firearms, and Mr. Hoffman had an exchange and greeted  
22 the UC. So if there's any question on the previous  
23 encounter on October 18th of whether the CI actually  
24 came into possession of that firearm, that would have  
25 been cleared up at that time, correct?



1 A. That's correct.

2 Q. Okay. Did the CI then state that he's  
3 interested in purchasing a pistol as he had done  
4 previously?

5 A. Yes, that's correct.

6 Q. And what happens after that?

7 A. The CI asked Mr. Hoffman to show them a  
8 pistol that would be easy to work with and asked if  
9 Mr. Hoffman had any holsters. Mr. Hoffman stated that  
10 he had holsters for some of the pistols, and  
11 Mr. Hoffman asked the CI if it was for home defense.  
12 The CI stated that they would need a pistol to starting  
13 running a cab service in the Martinsburg/Hagerstown  
14 area.

15 Q. Okay. Now, was the CI, in fact, starting up  
16 a cab service in Martinsburg?

17 A. No, they were not.

18 Q. Okay. Was this a ruse then?

19 A. That's correct. Yes.

20 Q. Okay. And had this been agreed upon before  
21 the visit, or is this --

22 A. No, this is something that the CI had  
23 mentioned -- on their own to solicit conversation.

24 Q. How did Hoffman reply to this?

25 A. Again, the CI explained to Mr. Hoffman that